STATE PERSONNEL BOARD, STATE OF COLORADO

Case Number 2002G039

AMENDED ORDER OF DISMISSAL ON REMAND

DIANA JOY,

Complainant,

٧.

DEPARTMENT OF HUMAN SERVICES, OFFICE OF BEHAVIORAL HEALTH AND HOUSING, MENTAL HEALTH SERVICES,

Respondent.

By Order dated March 25, 2002, the State Personnel Board remanded this matter to the administrative law judge for reconsideration of Board Rule R-8-39 and for specific findings of fact. Paragraph #3 has consequently been modified.

- 1. Complainant filed a Notice of Appeal of her termination on October 26, 2001, with the State Personnel Board.
- 2. Board Rule R-8-39, provides:

R-8-39. Filing Deadlines. Any appeal is timely if it is received or postmarked within 10 days after receipt of the written notice of the action. Any appeal that is not timely will be denied except for the following.

- A. If the 10th day falls on a weekend or legal state holiday (regular schedule), the time period will be extended to the next regular business day.
- B. For appeals to the Board, the Board may extend the period of time for good cause as long as the request for extension is received or postmarked within the 10-day appeal period. The Board shall add up to three days to the date of notice if it was not sent by certified mail; however, the 10-day period begins to run from the actual date of receipt.

- 3. Complainant concedes that she received the termination letter on October 15, 2001, by hand-delivery. Thus, the actual date of receipt was October 15. Rule R-8-39 has no further application. It is undisputed that complainant faxed a copy of her appeal to the State Personnel Board the afternoon of October 26. On her appeal form, she wrote that she had been told by a personnel representative that she did not have a right to an appeal because she had worked for less than one year, but she had just learned that she could appeal on the issue of disability discrimination. The notice of appeal rights that she received in the October 15, 2001 termination letter, advised complainant that the ten-day deadline applies to all charges of discrimination.
- 4. Complainant did not ask for an extension of time prior to the filing date.
- 5. In *Gigax v. State Personnel Board*, 632 P.2d 630 (Colo.App. 1981), it was held by the Colorado Court of Appeals as follows:

We rule that the provisions are unambiguous and that they both provide that the board may entertain a petition for review after the 10 day period and that it may grant a review of a dismissal if it finds that the petitioner had good cause for failing to file within the 10 day period.

6. The court was referring to the provisions of C.R.S. §24-50-125, which provide for the 10-day filing period. Here Complainant did not demonstrate good cause for failing to file within the 10-day period.

The following order is entered:

This case is dismissed on the grounds that the Board does not have jurisdiction to accept the matter because it is untimely. The Board has always interpreted the applicable statute and Board rule strictly since it involves the jurisdiction of the Board.

Dated this ____ day of April, 2002.

Robert W. Thompson, Jr. Administrative Law Judge 1120 Lincoln Street, Suite 1420 Denver, CO 80203

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

- 1. To abide by the decision of the Administrative Law Judge ("ALJ").
- 2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **\$50.00** (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 1/2 inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF MAILING

This is to certify that on the _____ day of April, 2002, I placed true copies of the foregoing **AMENDED ORDER OF DISMISSAL ON REMAND** in the United States mail, postage prepaid, addressed as follows:

Nora V. Kelly Attorney at Law 1776 Lincoln Street, Suite 1014 Denver, CO 80203

And in the interagency mail, addressed as follows:

Melissa Mequi Assistant Attorney General Employment Section 1525 Sherman Street, 5th Floor Denver, CO 80203